

**RAILROADS—LEASE—LIABILITY FOR TORTS.**—*BROWN v. ATLANTA & C. AIR LINE RY.*, 42 S. E. 911 (N. C.).—*Held*, that a railroad which leases its road, as authorized by its charter, is liable to an employee of the lessee, injured through the lessee's negligence. Cook, J., *dissenting*.

When a railroad leases its line without authority, it is clearly liable for all the torts of the lessee. *Abbott v. R. R. Co.*, 80 N. Y. 27; and this liability is often asserted where the lease was authorized. *Balsley v. R. R. Co.*, 119 Ill. 68; *Pierce, R. R. Law*, p. 244. But in *Murch v. Concord R. R. Co.*, 29 N. H. 9, all liability is said to rest on the lessee alone. Clearly, there is ground for holding that the lessee alone is liable for an injury to its servant; *Va. R. R. Co. v. Washington*, 86 Va. 629; *Elliott on Railroads*, sec. 472; and one court holds this, even where the lease was unauthorized. *R. R. Co. v. Culberson*, 72 Tex. 375. The lessee is liable whenever the lessor is; *Penn. Co. v. Ellett*, 132 Ill. 654; except perhaps where the injury springs from a defect in construction. *Kearney v. Cent. R. R.*, 167 Pa. St. 362.

**STREET RAILWAYS—ORDINANCES—POLICE POWER.**—*FIELDS v. NORTH JERSEY ST. RY. CO.*, 53 ATL. 404 (N. J.).—A city ordinance required all street railways to pave, repave, and keep in repair, under the direction of the municipal authorities, the space between the rails of their tracks and for one foot outside each outer track. *Held*, to be an assumption of the power of taxation, and not to be supported under the police power conferred on the municipality by the legislature.

It has been held that the duty to pave may be imposed by an ordinance passed subsequently to the franchise, provided the obligation of the charter contract is not impaired. *Sioux City St. R. R. Co. v. Sioux City*, 138 U. S. 98. Also that such an ordinance is valid as a police regulation, subject to the limitation that it must be reasonable. *R. Co. v. Louisville*, 8 Bush 45. See "Comment," p. 318.

## REVIEWS.

*A Treatise on the Law of Banks and Banking.* By John T. Morse, Jr. Fourth edition. Revised, rearranged and greatly enlarged by Frank Parsons. Little, Brown & Co., Boston. 1903. 2 vol., pp. cvi. 1490, sheep, \$12.00.

The fourth edition of this well-known standard work is revised by Frank Parsons, who so ably edited and enlarged the third edition of 1888. Many improvements have been made in this revision, notably the addition of the citations of the National Reporter System and the inclusion of all the National Banking Laws to date, as well as the incorporation of the important decisions since the former edition. Although the work does not pretend to be a treatise on negotiable instruments, yet it is to be regretted that the editor did not see fit to insert the text of the Negotiable Instruments Act, which is so intimately connected with the subject, and which has been so widely adopted that it would be a valuable addition to the work.

The author criticises the definition of a bank as given in the dictionaries and in Bouvier, and gives one which seems to cover the subject thoroughly. "A bank is an institution, usually incorpo-

rated, with power to issue its promissory notes intended to circulate as money; or to receive the money of others on general deposit, to form a joint fund that shall be used by the institution for its own benefit, for one or more of the purposes of making temporary loans and discounts, of dealing in notes, foreign and domestic bills of exchange, coin, bullion, credits and the remission of money; or with both these powers, and with the privileges in addition to these basic powers, of receiving special deposits, and making collections for the holders of negotiable paper, if the institution sees fit to engage in such business." Many valuable notes are added to the text throughout the work, and especially those on usage in relation to banks (14-29), and on the use of bank-books as evidence (552-556). The law of banks and banking is treated in a very logical manner; the principles laid down are illustrated *ad libitum* with cases and with discussions of the law in the different States, making in all a work of great practical value to the lawyer and to the banker. The subject is conveniently treated under the heads of (1) preparation for business, (2) business of the bank, (3) officers and agents, (4) deposit, (5) checks, (6) bills and stock, and (7) the National Banking Laws. The chapter on officers and agents is very well arranged and classified. One particularly striking and satisfactory feature is the marginal indexing of the text in addition to the ordinary paragraph indexing. Under the subject of deposit the vexed question as to the liability of a bank for a correspondent is carefully treated. There is an utterly irreconcilable diversity of opinion on that question, and the different rules are discussed and collated in the text illustrated by cases from the various States (509-535). Probably the most valuable subdivision is that on "Checks," where many interesting comments and conclusions of the author are forcibly stated. In speaking of the ordinary rule that death of a drawer revokes the check he says: "Death of a drawer is usually held a revocation of the bank's authority to pay his uncertified checks, but the reason of the case is all the other way, and it is to be hoped the law will soon be remedied."

Attention is called to the fact that it has been carelessly laid down in American text-books that the commission by the depositor of an act of bankruptcy revokes the power of the bank thereafter to pay his checks, but it will be observed that only English authorities are cited for it. Such is the statutory law in England, but is not law in the United States (706). Payment of checks (Chap. XXXII), and Forgery of Checks (Chap. XXXIII), are exhaustively treated. In discussing the effect of a forged signature he states the old doctrine, *i. e.* whether or not the payee has done his full duty, or if he has and the negligence is with the bank alone, whether the payee will be worse off by correcting the error than if payment had been refused (830). In some of the States, the courts have gone to an unprecedented length in relieving banks from the burden of the old rule and have practically shifted the *onus* to the shoulders of the

payee. See *National Bank of North America v. Bangs*, 106 Mass. 241; *Danvers Bank v. Salem Bank*, 151 Mass. 230, 24 N. E. 44.

In regard to the mooted question as to whether a check operates as an assignment, it is stated that one class of cases affirms that a check is an assignment as between a drawer and payee so that a bona fide holder is preferred to the creditors of the drawer under a subsequent assignment in insolvency, and that upon presentment the bank is brought into privity with the holder, and is liable to him for improper refusal to pay. And that a countermand from the drawer is no excuse for such refusal. "Upon this side we find a goodly array of authorities, and all the advanced, clear and independent thought and reasoning" (892). Illinois and South Carolina are the strongholds of the doctrine. However that may be, it is certainly contrary to the weight of authority in this country, that a check is neither a legal nor an equitable assignment as between drawer and payee, nor a sufficient foundation for an action by the holder against the bank. And see *Negotiable Instruments Act*, secs. 127, 189.

Part II (1213-1405), treats of the National Banking Laws and their construction, the U. S. Revised Statutes of 1878 and subsequent acts with notes upon the cases, making practically an annotated National Banking Law, which will be of service because of its scientific arrangement and treatment.

Altogether, Mr. Morse's work as revised by Mr. Parsons is of exceeding value, and will continue to be the standard on the subject in this country, and be quoted with approval in the future as in the past.

H. C. B.

*A Commentary on the Law of Mines and Mining Rights.* By Wilson I. Snyder, of the Utah Bar. T. H. Flood and Company, Chicago. 1902. 2 vols., sheep, pp. 1464. 36 illustrative cuts.

These volumes are in every respect an excellent production. The author's commentaries are crisp, clean cut and free from the involved, ultra-judicial style—an essential requisite in treatment of a subject so intricate and so little understood as the law of mining and mining claims. In this connection, the many drawings—most of them from the records of adjudicated controversies—are of especial value. The author evidences his long practical experience as a mining lawyer, and as a thinker rather than a mere compiler, by an occasional candid criticism of the courts and statutes, but without burdening his pages with profitless discussions. (See e. g. pp. 662-4, where under Sub-Surface and Extra-Lateral Rights the vexed questions of application of the true dip and strike from the apex of a vein are considered.) Part XIII—Miscellaneous Titles, Conveyances and Contracts—which includes mining leases, oil and gas boring, etc., might well have been expanded to include brief treatment of the rights and remedies of shareholders in various bonded-claim corporations and promotion companies.

The volumes are typographically satisfying; with all the aids and indexes for most convenient reference. The appendices embody the federal laws, a code of State statutes, and forms in patent proceedings. The citations are very full, including constant references to Lindley on Mines, standard geologies, etc.

The work is general in character, comprehensive in scope, perhaps as logical in arrangement as the subject admits, and is destined to become distinctly authoritative in a great and growing branch of law.

H. M. H.

*Commercial Trusts, The Growth and Rights of Aggregated Capital.*

By John R. Dos Passos. G. P. Putnam's Sons, New York. 1 vol., pp. 137.

An argument delivered before the Industrial Commission at Washington, D. C., in 1899, corrected and revised, 1901. This little volume presents to us the views of one man only, on a subject fairly obscured by multitudinous and diverse opinions, but in exposition so simple and straightforward as to carry a great deal of enlightenment and conviction. The style is not so much that of the economist as of the intelligent American lawyer of to-day, who knows the theories but who cannot be led away from the facts. In his treatment, Mr. Dos Passos shows, by historical illustration, the absolute impotence of legislation struggling against natural trade laws; emphasizes States-rights in the question of Federal interference with corporations, and shows, in an interesting manner, his reasons for believing that this cry for publicity is uncalled for, the parties interested, namely, the State, the Public, and the Stockholder, being already sufficiently protected and that there is no public necessity of the kind warranting Federal interference. He advocates specific legislation against any corporation enjoying franchises or privileges not granted to or enjoyed by other persons or corporations, and that other corporate abuses be reached by effecting homogeneity of State laws. The author, at every step, defends the alleged evils of the "resulting monopolies," or the so-called trusts.

G. R. J.

*The Administration of Dependencies.* By Alpheus H. Snow. G. P. Putnam's Sons, New York. 1902. Cloth, pp. 604.

The author states in his introduction that the work has been undertaken in order to ascertain the meaning of that clause of the Constitution which provides that "Congress shall have power to dispose of and make all needful rules and regulations, respecting the territory or other property belonging to the U. S." (Sec. III, Art. 3). The book itself may perhaps be summarized by the sub-title: "A Study of the Evolution of the Federal Empire with Special Reference to American Colonial Problems." In view of the recent territorial acquisitions of our government, it is a most timely work and one fitted to be of great value to all students of this modern problem. The study is purely historical and, save in the chapter on "Imperial Obligations," singularly free from

personal view. The author traces the constant growth of the Imperial idea from the time of the Virginia colonization (1606) until the present date. He shows that the above constitutional provision is a complete grant of all the powers necessary to the Imperial government of the Member-States in a Federal union, as conceived by John Dickinson and Gouverneur Morris, in our Revolutionary period, and confirmed by the views of modern writers. The difference between Territories of the United States and Territories belonging to them is distinguished in a long line of judicial dicta from the decision of Chief Justice Marshall, in *The American Insurance Company v. Canter*, 1 Peters 449 (1828), to the recent case of *The Mormon Church v. The United States*, 136 U. S. 1. The decision in the so-called "Insular Cases" (*Downes v. Bidwell*, 184 U. S. 244), is discussed briefly as being the latest expression of judicial thought in accord with the conclusions of former cases.

In the last chapter of the book Mr. Snow points out that precedent and experience have proved that a combination of expert and popular government is the most successful form of administration. To use his own words, he suggests "that the habitual administration of dependencies should be in the charge of the President, assisted by expert investigators and advisers, and that the superintendence and final control of the administration should rest with Congress subject to the final judgment of the whole people of the American union." The work, as a whole, can hardly fail to be of interest to the student and cannot be too highly commended to the consideration of all.

R. H. S.

*The Health Officers' Manual and Public Health Law of the State of New York.* By L. L. Boyce, of the Albany Bar. Matthew Bender, Albany. 1902. Cloth, pp. 289.

This volume is one of the series of Legal Works for County, Town and Village Officials of the State of New York, which is being published by Matthew Bender. It is, in the main, a compilation of the New York statutes upon this particular branch of governmental activity, but includes much other relevant material, as decisions of the court, forms, and comment of the editor, necessary to a thorough and complete treatment of the subject.

A brief outline of the contents will clearly indicate the scope and value of the work. Chapter 1 gives the text of the Public Health Law, covering the powers and duties of the State Board of Health, the local boards, and the Health Officer of the Port of New York; adulterations; quarantine regulations; provisions governing the practice of medicine, dentistry, veterinary medicine and surgery; pharmacy regulations; etc. Accompanying each section which has been the subject of interpretation by the courts, is a brief digest of the decisions. Chapter 2 is composed of many miscellaneous statutes relating to or affecting the public health, and gathered from various portions of the statute book. Chapter 3 is original work of the editor,—a commentary upon the health law,

with explanation, suggestion and information designed especially to aid the health officer in deciding the many problems which arise in the discharge of his duties. The remainder of the work is taken up with the sanitary regulations which are recommended by the State Board of Health for adoption by the local boards and with copies of the forms in most common use by the health authorities.

The health officers of New York and all others interested in the administration of the State's health laws are fortunate in having so satisfactory a volume prepared for their especial use.

S. W. E.

*The United States Bankruptcy Law of 1898 with Amendments of 1903.* Edited by H. Noyes Greene, of the Troy, N. Y., Bar. Matthew Bender, Albany. 1903. Paper, pp. 51.

This little pamphlet is certainly worth the price. Not only are the Amendments of 1903 incorporated in the text of the act, but they are also in italics, thus showing at a glance the new matter. The editor has also added a complete index of the whole act. The publishers merit the thanks of all for this neat, opportune and handy edition.

S. W. E.

## ACKNOWLEDGMENTS.

THE LAW OF SURETYSHIP; covering Personal Suretyship, Commercial Guarantees, Suretyship as related to Negotiable Instruments, Bonds to secure Private Obligations, Official and Judicial Bonds and Surety Companies. By Arthur A. Stearns, of the Cleveland Bar. W. H. Anderson Co., Cincinnati. 1903. Sheep, pp. 747. *Review will follow.*

A TREATISE ON THE LAW OF NEGOTIABLE INSTRUMENTS. Fifth edition. By John W. Daniel and Charles A. Douglass. Baker, Voorhis & Co., New York. 1903. 2 vol., pp. 1937, sheep. *Review will follow.*

THE ELEMENTS OF THE LAW OF NEGOTIABLE INSTRUMENTS. By John W. Daniel and Charles A. Douglass. Baker, Voorhis & Co., New York. 1903. Cloth, pp. 418. *Review will follow.*

A TREATISE ON THE POWER OF TAXATION, STATE AND FEDERAL IN THE UNITED STATES. By Frederick N. Judson, of the St. Louis Bar. F. H. Thomas Book Co., St. Louis. 1903. Sheep, pp. 868. *Review will follow.*

A TREATISE ON THE LAW OF THE MEASURE OF DAMAGES FOR PERSONAL INJURIES. By George P. Voorheis, A.B. The Laning Co., Norwalk, Ohio. 1903. Sheep, pp. 577. *Review will follow.*

A COLLECTION OF THE WRITINGS OF JOHN JAMES INGALLS. Essays, Addresses and Orations. Hudson-Kimberly Pub. Co., Kansas City, Mo. 1902. Cloth, pp. 536. *Review will follow.*

THE LAW OF REAL PROPERTY AND OTHER INTERESTS IN LAND. By Herbert Thorndyke Tiffany. Keefe-Davidson Co., St. Paul. 1903. 2 vol., sheep, pp. 1589. *Review will follow.*

A TREATISE ON COMMERCIAL PAPER AND THE NEGOTIABLE INSTRUMENTS LAW. By James W. Eaton and Frank B. Gilbert. Matthew Bender, Albany. 1903. Sheep, pp. 767. *Review will follow.*

PROCEEDINGS OF THE EIGHTH ANNUAL MEETING OF THE IOWA STATE BAR ASSOCIATION. Tipton, Iowa, 1902. Paper, pp. 225.